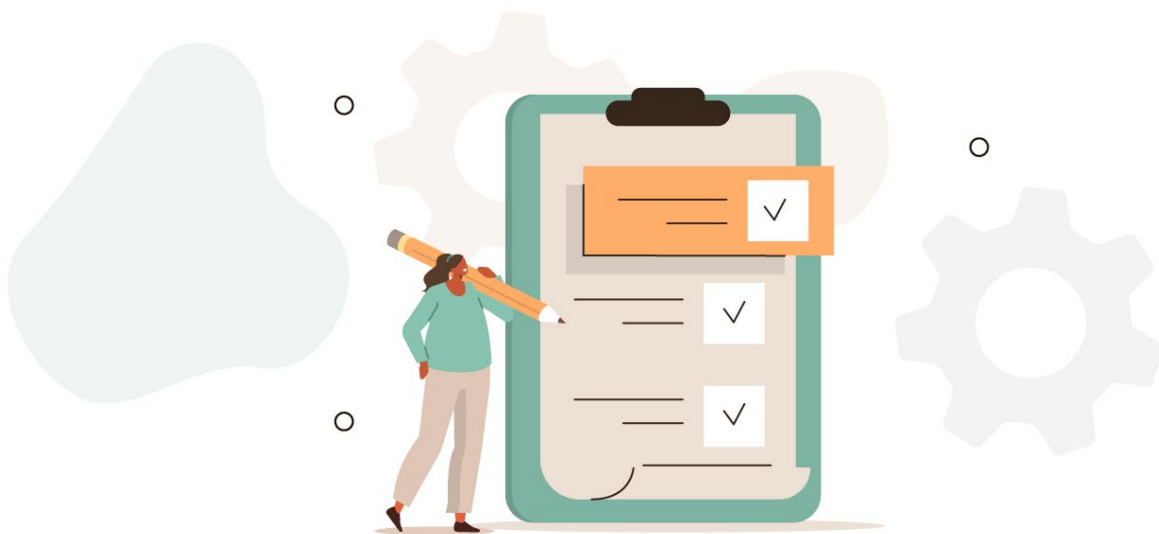




Contracting Guide for State Vocational Rehabilitation Agencies (SVRAs)



Introduction

The purpose of the Contracting Guide is to provide State vocational rehabilitation agencies (SVRAs) technical assistance on contract development and monitoring for RSA-funded programs within the agency. A large percentage of Federal VR funds are expended through contracts for purchased services. That is why the review of contracts is a key component of the Rehabilitation Services Administration's fiscal monitoring.

Contracts should –

1. Protect the interests of any consumers being served;
2. Protect the Federal and State interests by complying with Federal and State requirements;
3. Only reimburse costs that are allowable, allocable, reasonable, and necessary;
4. Contain measurable outcomes that demonstrate the contract's benefit to the VR program; and
5. Be monitored on a consistent basis to ensure the total contract costs are in proportion to the benefit received by the VR program.

According to **2 C.F.R. § 200.302(a)**, SVRAs must expend and account for Federal awards by following Federal and State requirements. In addition, the State's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

Planning for contract development should begin before the issuance of contracts. SVRAs must ensure the contract requirements are satisfied and consistent with Federal and State requirements, the goods and services are identified to be delivered in a timely manner, the financial interests of Federal and State monies are protected, and general counsel is consulted when necessary. Contract monitoring is

also essential to the contracting process and includes all actions taken after the award is made, as outlined in this guide. Monitoring activities also require pre-planning and should be continuously evaluated.

When developing contractual processes, managing contractual expenditures, or carrying out monitoring procedures, SVRAs must consider all applicable State procurement requirements defined in the State's laws and policies and procedures (**2 C.F.R. § 200.317**) and Federal requirements including but not limited to –

- Statutory and programmatic requirements of the Rehabilitation Act and implementing regulations, respectively;
- All Uniform Administrative Requirements in **2 C.F.R. Part 200** (including appendices);
- Education Department General Administrative Regulations (EDGAR) requirements, including **34 C.F.R. § 76.50 and 76.707**;
- Terms and conditions of the awards (including program and fiscal reporting requirements);
- Grant Award Notification (GAN) attachments; and
- All RSA published **subregulatory guidance**.

Table of Contents

Introduction	2
Table of Contents	4
Glossary	5
Regulatory Requirements	9
Uniform Administrative Requirements.....	9
Terms and Conditions of the Grant Award and GAN Award Attachments	12
RSA Subregulatory Guidance.....	12
EDGAR Requirements	12
Stevens Amendment.....	14
State Procurement Requirements.....	15
What Is a Contract?	17
Contract Formation.....	19
Documentation.....	20
Procurement Process	22
Terms and Conditions	28
Obligation of Funds	41
Contracting Internal Controls.....	43
Managing Contract Compliance and Performance.....	43
Contract Closeout	57
Appendices.....	58
Appendix A	58
Appendix B	63



Glossary

The following terms and definitions are examples of common references used in the contract process. This list is neither exhaustive nor fully applicable to all State VR agencies. SVRAs need to know their State-specific terminology, definitions, and procurement requirements. Additional Federal definitions may be referenced in [2 C.F.R. § 200.1](#).

Commodity: Any equipment, materials, or supplies. They are also referred to in this guide as goods and items.

Contract: Legal instrument by which a recipient of a Federal award purchases property or services needed to carry out the project or program under a Federal award ([2 C.F.R. § 200.1](#)).

Contract Monitoring: Begins after awarding the contract. Its purpose is to ensure the contract meets total performance expectations of the SVRA and contractor in compliance with applicable Federal requirements, in accordance with the terms and conditions of the contractual agreement ([2 C.F.R. § 200.329](#)).

Contract Administrator: Oversees the contract development, activities, and monitoring progress. Verifies the contract is executed following Federal and State requirements and the services are performed as required and timely. They may also establish reporting requirements the contractor must follow.

Contractor: Entity that receives a contract ([2 C.F.R. § 200.1](#)). A contractor may also be referred to as a vendor.

Corrective Action Plan: Collection of activities initiated to alter or improve the course of a task or project that may have deviated from, or failed to meet, requirements specified in the contract.

Fixed Price Contract: Firm-fixed-price contract that provides a price that is not subject to any adjustment based on the contractor's costs incurred while performing the contract.

Invitation To Bid (ITB): Call to contractors to submit a proposal for a specific product or service. An invitation to bid is generally awarded to the contractor who submits the lowest bid.

Lease: Contract conveying from one to another the use of a commodity for a designated period of time in return for established periodic payments. It does not contain an option or an obligation to purchase.

Milestone Payments: Performed sequentially and in the order listed. No work shall be accepted, nor will it be paid for, unless and until all prior events have been successfully completed. Written official notice advising of the successful completion and approval for payment of an event shall establish the completion date for that event and shall constitute permission for the contractor to begin the next event in the sequence. The contractor and the SVRA agree that payments are to be made based upon satisfactory completion by the contractor of the milestones established in the schedule.

Modification or Amendment: Alteration of one or more substantive terms of the contract. Because substantive changes can cause significant changes to the rights and responsibilities of one or both parties, bilateral approval serves as an internal control, so both parties are fully aware of the nature of the change. Substantive change usually impacts the contract term, work statement (specifications), method of delivery, place of delivery, and cost or terms and conditions. A change clause should be included in all contracts to establish that contract modifications can be made throughout the contract's life.

Offer: Proposal, quote, or bid submitted in response to an Invitation to Bid, Request for Proposal, Request for Quotation, or Negotiation.

Offeror: Entity submitting a response to a solicitation document or in response to a negotiation.

Open Market Contract: Contract awarded as a result of a publicly advertised competitive solicitation for the purchase of a commodity or service not covered by a government contract.

Partial Payment: Payment of a sum less than the full amount claimed by the contractor.

Purchase: Solicitation and acceptance of an offer to (1) provide a service, (2) lease or rent a commodity, (3) sell a commodity.

Purchase Order (Authorization): Document issued by an SVRA to a provider of products or services, indicating the good/service ordered, quantity, and cost. A purchase order is a legal offer to buy products and services.

Rental: Contract for the right to use a commodity or product for a period, usually with payments made at intervals over the period of use.

Request For Proposal (RFP): Solicitation document used for competitive procurements that exceed a threshold established by the SVRA's State law or procedures and normally used for larger, advertised competitive procurements for services. It is an alternate acquisition method to the ITB.

Request For Quotation (RFQ): Solicitation document normally used for smaller, non-advertised competitive procurements less than the threshold established by the SVRA's State law or procedures.

Simplified Acquisition Threshold: Dollar amount below which an SVRA may purchase property or services using small purchase methods. This method expedites the purchase of items costing less than the simplified acquisition threshold.

Single Source Contract: Any contract entered into in which two or more vendors can provide the commodities and/or perform the services required, but the SVRA selects one vendor over the others for reasons such as expertise or previous experience with similar contracts.

Sole Source Contract: Any contract entered into when only one vendor for the required commodities or services is available. Because only one vendor can provide the goods or services, it is not possible to obtain competitive bids.

Solicitation Document: A written Competitive Sealed Proposal, Invitation to Bid (ITB), Request for Proposal (RFP), or Request for Quotation (RFQ).

Time and Materials: Time and Materials contracts provide the contractor with a fixed rate for each hour of labor plus the cost of materials. If no materials are involved, this is referred to as "labor hour." A contract ceiling price or not-to-exceed amount is usually established to control cost. Time and Materials pricing is generally used to establish suppliers and prices for a given commodity or a group of commodities for a period of time without guaranteed quantities being specified.

Term Contract: Contract generally intended to cover all normal requirements for a commodity or service for a specified period of time based on estimated quantities only. This may be referred to as an indefinite quantity or requirement contract.

Regulatory Requirements

Uniform Administrative Requirements

The Federal requirements under Uniform Administrative Requirements **2 C.F.R. § 200.317** state the following: "When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with **§ 200.321**, **§ 200.322**, and **§ 200.323** and ensure that every purchase order or other contract includes any clauses required by **§ 200.327**. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in **§ 200.318** through **§ 200.327**."

Note: The VR program does not have subrecipients.

Within Uniform Administrative Requirements, there are three primary fundamental considerations to incorporate into the contracting process:

1. Period of Performance

SVRAs must ensure they meet the Uniform Administrative Requirements applicable to Federal funds, including following the period of performance specific to an award. This is the timeframe when new obligations can be made (**2 C.F.R. § 200.1 Definition Period of Performance**). An obligation is defined in **2 C.F.R. § 200.1** as an order placed for goods or services during a given period requiring payment during the same or a future period.

All obligations, contractual or otherwise, must meet the requirements in **2 C.F.R. § 200.302 - Financial Management**. This means any budgeted amount, the obligation of funds (contractual or otherwise), payment of invoices, reimbursement to vendors, or receipt of funds or refunds must be supported by a sound financial system. Documentation should support all fiscal activities and provide a clear audit trail, which includes contract monitoring.

Additionally, [2 C.F.R. § 200.302\(a\)](#) establishes requirements that apply to all obligations and expenditures, including all legal instruments by which the SVRA purchases property or services needed to carry out the project or program under a Federal award (Acquisition Cost definition ([2 C.F.R. § 200.1](#))).

Overall, SVRAs are required to ensure all obligations and expenditures are accounted for following Federal and State requirements, whether by direct purchase, indirect cost, contractual agreement, third-party cooperative arrangement (TPCA), etc. The terms and conditions of the Federal awards and all other applicable grant requirements must also be followed as instructed in the Obligation of Funds section of this guide. Additional information is available in the [RSA Frequently-Asked Questions About Formula Grant Awards](#).

While TPCAs are contracts, they do not follow the same obligation requirements as other contracts. Matching funds within TPCAs are typically comprised of salary costs of the cooperating agency (CA) staff who are directly providing VR services, as is often the Federal portion of TPCA staff activity costs. These costs are considered certified expenditures. Additionally, while CA staff remain employees of the CA, the CA staff and expenditures are under the administrative supervision of VR.

VR agencies may not obligate all projected non-Federal share from a TPCA contract upon execution. As a result, obligations for non-Federal (and Federal) share may be recorded when the time is worked by the CA staff and certified as expenditures by the cooperating agency.

2. Cost Principles

Subpart E - Cost Principles establish the factors affecting the allowability of costs that must be considered when contracting for goods or services.

3. Appendix II

Legal instruments must include, where appropriate, the contract provisions in **Appendix II to 2 C.F.R. Part 200, Title 2 -- Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**. There are twelve (12) clauses in the Appendix with further Federal citations and the circumstances in which they are required.

- i.** Contracts for more than the simplified acquisition threshold must address breach remedies;
- ii.** All contracts in excess of \$10,000 must address termination for cause and convenience;
- iii.** Equal Employment Opportunity;
- iv.** Davis-Bacon Act, as amended;
- v.** Contract Work Hours and Safety Standards Act;
- vi.** Rights to Inventions Made Under a Contract or Agreement;
- vii.** Clean Air Act and the Federal Water Pollution Control Act, as amended;
- viii.** Debarment and Suspension;
- ix.** Byrd Anti-Lobbying Amendment;
- x.** Procurement of Recovered Materials;
- xi.** Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment; and
- xii.** Domestic Preferences for Procurements.

Agencies should ensure processes are in place to determine which appendices apply and how they will be monitored for compliance. Although not in Appendix II, SVRAs also need to consider whether language related to the Build America, Buy America Act (BABAA) is needed.

For additional information, visit [VR Program Fiscal Management](#).

Terms and Conditions of the Grant Award and GAN Award Attachments

The provisions of [2 C.F.R. § 200.211](#) identify all Federal requirements the awarding agency must include as a term and condition of receiving Federal funds. SVRAs must be familiar with the requirements and apply them to contracting as applicable.

These terms and conditions for RSA-funded programs are included in the initial grant award notification (GAN) for the Federal fiscal year (FFY). Any additional GANs received throughout the remainder of the FFY (such as continuing resolutions or receipt of reallocation funds) will not include all the attachments associated with the terms and conditions of the grant award; however, the initial terms and conditions still apply. New or revised requirements implemented during an FFY may be attached to a GAN supplement with additional terms and conditions.

SVRAs need to maintain a copy of the initial GAN of each FFY to ensure compliance with all requirements of the Federal award, which apply to contractual agreements. The GAN award attachments include additional information relevant to the SVRA, such as reporting requirements established by RSA, limitations on conference expenditures, non-Federal share requirements, etc.

RSA Subregulatory Guidance

The RSA establishes [subregulatory guidance](#) that SVRAs must also follow. The guidance issued by the Federal awarding agency constitutes requirements for the Federal award in accordance with [2 C.F.R. § 200.211\(e\)](#). There are a variety of formats, including policy directives (PD), technical assistance circulars (TAC), information memoranda (IM), Frequently Asked Questions (FAQ), and dear colleague letters (DCL).

EDGAR Requirements

EDGAR [34 C.F.R. § 76.707](#) determines when contractual obligations are made, which is the date the State makes a binding written commitment to obtain the services. Obligation requirements are categorized in the table that follows:

If the obligation is for...	The obligation is made...
(a) Acquisition of real or personal property	On the date on which the State or subgrantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the State or subgrantee	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee	On the date on which the State or subgrantee makes a binding written commitment to obtain the services.
(d) Performance of work other than personal services	On the date on which the State or subgrantee makes a binding written commitment to obtain the work.
(e) Public utility services	When the State or subgrantee receives the services.
(f) Travel	When the travel is taken.
(g) Rental of real or personal property	When the State or subgrantee uses the property.
(h) A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 C.F.R. part 200, Subpart E - Cost Principles	On the first day of the grant or subgrant performance period.

The date on which the State or subgrantee makes a binding written commitment must be determined in compliance with State and Federal procurement rules. For example, in many States, contracts are considered effective on the date the contract was signed by all required parties. This would be consistent with the EDGAR requirements. For service authorizations or purchase orders, the date the service authorization is issued is the date the agency made a binding written commitment to purchase a service. To the extent that State requirements regarding the date obligated differ from Federal requirements, the State is responsible for tracking and reporting all obligations in accordance with Federal requirements. This may require the State to maintain two tracking systems, one for State requirements and one for Federal.

Stevens Amendment

Per the Stevens Amendment, **Public Law 101-166, Section 511** (Page 2222), SVRAs are required to include specific funding information. This requirement is intended to increase transparency and accountability in Federal spending.

When issuing statements, press releases, **requests for proposals, bid solicitations**, and other documents describing programs or projects funded in whole or in part with Federal money, grantees receiving Federal funds shall clearly state –

- A.** The percentage of the total costs of the program or project, which will be financed with Federal funds;
- B.** The dollar amount of Federal funds for the project or program; and
- C.** Percentage and dollar amount of the total costs of the project or program financed by non-governmental sources.

For additional information, visit the [VRTAC-QM website](#).

An example of such language could be:

"This (project) is (X %) funded by the U.S. Department of Education, Rehabilitation Services Administration as part of an award totaling (insert the SVRA award amount here) with X% financed from non-governmental sources."

State Procurement Requirements

SVRAs are required to follow their State procurement processes as stated in the Uniform Administrative Requirements at [2 C.F.R. § 200.317](#).

Due to the unique and complex nature of State requirements, SVRAs need to know their State statutory authority for procurement, responsibilities of central procurement offices (if applicable), requirements or limitations based upon the type of procurement, and vendor and solicitation requirements.

State procurement **regulatory requirements** can be found in, but are not limited to –

- State Statutes;
- Code of State Regulations;
- State Statute Authority; and
- State Procurement Handbook.

State procurement **procedure requirements** can be found in multiple State policies, including but not limited to –

- State Procurement Codes;
- State Rental Policies or Leasing Requirements;
- State Cooperative Agreement Policies;
- State Per Diem Allowances and Travel requirements;
- State Statutes; and
- State Internal Control Guides.

State procurement requirements may have written processes for contractual requirements, including but not limited to –

- Acquisition threshold;
- Multi-year contracts;
- When an obligation occurs; and
- Requirements on single or sole source selection.

These may differ from State to State and typically establish when an obligation occurs, for State purposes, in contractual agreements, requirements, and limitations on multi-year contracts, single or sole source selection requirements, and criteria, etc. For example, various State policies indicate contractual obligation occurs in one of the following (actual examples from State policies):

- Upon implementation date in agreement regardless of when the contract is signed;
- Upon final signature of agreeing parties;
- Upon signature of approval from the designated State agency; and
- Upon initiation of service provisions.

The SVRA would need to determine which of the above approaches is consistent with the EDGAR requirements to ensure consistency between State and Federal reporting. Using the example above, the methodology for determining the date of contract obligations, consistent with Federal requirements, would be the final signature of all required parties. **In the event the State's options were not consistent with the Federal requirements, States would still have to assign, track, and report the obligations consistent with Federal requirements.**

In addition, obligations assigned to a period of performance must be for a bona fide need during the period of performance. If a contract is entered into during a period of performance, but all of the services will be performed after the period of performance ends (i.e., the services would be performed after the FFY of appropriation and the carryover year has ended, assuming the State had satisfied the requirements for a carryover year), the obligation would not be necessary and reasonable for the performance of the award during the period of performance in which the contract was made.

What Is a Contract?

Under a Federal award, a contract is a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program. There are a variety of terms for legal instruments such as contract, agreement, memorandum of understanding, cooperative agreement, etc. A subrecipient is an entity that receives a subaward, which is **an award provided by a pass-through entity (Federal grantee) to a subrecipient to carry out part of a Federal award received by the pass-through entity.**

Under the VR program, SVRAs **MAY NOT issue** subawards, consistent with the EDGAR requirements in **34 C.F.R. § 76.50(b)**, which states the authorizing statute determines the extent to which a State may make subawards. Since the Rehabilitation Act is silent on using subawards in the VR program, they are not permitted. Subgranting/Subawards are only permissible in the Independent Living Services for Older Individuals Who are Blind (OIB) program. The OIB statute specifically permits grantees to make subawards to public and nonprofit private agencies or organizations. For additional information on subrecipient and contractor determinations, see **2 C.F.R. § 200.331**.

A legally enforceable written contract requires –

1. An offer (specific material/service, specifications, and deliverables);
2. An acceptance;
3. Consideration (the value received and given); and
4. Execution by competent parties with authority to bind the entity.

The recipient's status (contractor or subrecipient) should be clearly identified in the agreement, along with all requirements. For example, a lack of clarity could mean that the SVRA intended to execute a contract, but the agreement details support a subrecipient relationship instead. Therefore, regardless of the agreement's title, it will be treated as a subgrant/subaward. If the agreement is under the VR program, the agreement will be out of compliance and could result in disallowed costs.

The following tool published by the Association of Government Accountants (AGA) may be used to help an SVRA make a judgment as to whether an agreement establishes a subrecipient or a contractor arrangement.

Contractor (Allowable)	Subrecipient (Unallowable)
<ul style="list-style-type: none"> • Obtains goods or provides services which generally create a procurement relationship • Usually provides these goods or services within normal business operations • Provides these goods and services to many purchasers • Generally, operates in a competitive environment • The goods and services provided are ancillary to the federal program • A contractor does not generally participate in the design of the project • Little to no independent decision-making is involved • There is a commitment to deliver a good or service on a specific date or cost • The technology or products developed will not be owned by the contractor 	<ul style="list-style-type: none"> • Creates a Federal assistance relationship • Determines who is eligible to receive what Federal assistance • Performance measured in relation to whether objectives of Federal program were met • Has programmatic decision-making responsibilities • Must comply with program requirements • Uses the programs to carry out program for public purpose specific to the award • Substantive, programmatic work or an important or significant portion of the program is being undertaken • The receiving entity (subrecipient) retains some element of programmatic control and discretion • May have to provide cost-sharing or matching funds



Contract Formation

Contract formation is a series of procurement activities between the SVRA and a contractor that results in a contract. Other interchangeable terms for this phase are the "pre-solicitation" and "contract development." The contract formation activities serve as the preamble to internal activities that will follow once the contract is executed.

SVRAs should consider internal staff, programmatic and fiscal, who offer value to the contract formation or pre-award process and encourage close collaboration throughout the entire contract formation phase. Staff must clearly understand their specific responsibilities and restrictions in administering the contract. During this process, staff will work together to develop specific contract goals and provide the contractor/vendor with contract formation tools such as specifications, price, delivery types, selection and evaluation criteria, contract templates, forms including programmatic and fiscal data reporting, and general types of contract language that contain contract clauses designed to minimize and manage contract risks effectively.

The time spent on contract formation will reduce the time spent administering contracts and aid in developing a plan for monitoring contract performance. Contract monitoring should be considered during the contract formation phase for compliance, quality, and effectiveness. Such considerations begin with specifying the need, establishing contract goals, identifying potential risks when using procurement tools to develop specifications, and having a contract that effectively addresses the established objectives. Contract monitoring points include, but are

not limited to, deliverables, timetables, payment triggers, quality of deliverables, and the specific information and reports the vendor must produce so performance can be monitored, the contractor can be reimbursed, and the SVRA can meet its Federal reporting requirements (e.g., RSA-17, SF-425 and RSA-911). The contract can only be adequately monitored and **enforced** if these points are incorporated during contract construction.

Documentation

It is the responsibility of the SVRA to ensure all contractual requirements are met and contract monitoring is documented. The organization of contract documentation is critical and must be preserved by the SVRA. The documentation must also meet the Federal and State record retention requirements and provide a basis for settling claims and disputes should they arise. Federal record retention requirements are located at [2 C.F.R. § 200.334](#).

State requirements for electronic records must be followed if applicable, and may be longer, but not shorter, than the Federal requirements. Throughout the contract's life, the organization of contract information will provide a single, easily accessed repository for those documents related to contracting duties and performance. It will also allow the SVRA to provide requested information in a State audit or RSA monitoring. It should contain such things as –

- A copy of the current contract and all modifications;
- A copy of all specifications or manuals incorporated into the contract by reference;
- A reference list or a list of prior contracts with this specific vendor (if they offer valuable historical data);
- The solicitation document, the contractor's response, evaluation determination, and the notice of award document;
- A list of contractor submittal requirements;
- A copy of written Federal prior approval, if applicable;
- A list of all information furnished to the contractor;
- A schedule of compliance reviews and internal correspondence, if applicable;
- A copy of all general correspondence related to the contract;

- The originals of all contractor data or report submittals;
- A copy of all routine reports required by the contract;
- A copy of all notices to proceed, stop work, correct deficiencies, or change orders, including amendments;
- A copy of all letters of approval pertaining to such matters as materials, the contractor's quality control program, prospective employees, and work schedules;
- The records/minutes of all internal and external meetings, including sign-in sheets and agendas;
- A copy of the receipt of goods or service delivery documentation sufficient to determine contractual requirements are met;
- A copy of all monitoring reports, site visits, desk reviews, and expenditure documentation reviews; and
- A copy of all contractor invoices, information relative to discount provisions for prompt payment, letters pertaining to contract deductions or fee adjustments.

Proper attention must be given to Personally Identifiable Information (PII). In the event of a public records request, confidential information may need redaction. Refer to legal counsel, as necessary.

Record retention schedules are unique to each State but must also incorporate Federal requirements.

Many agencies implement a record retention period only for three years; however, **2 C.F.R. § 200.334** states, "Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years **from the date of submission of the final expenditure report...**" (emphasis added). If a VR agency qualifies for a carryover year, the final report is not due until 28 months after the start of the award. Maintaining records for three years after submitting the final report would result in over a five-year record retention span. RSA recommends that agencies and their contractors maintain records for a **minimum of five years** to ensure documentation is available pursuant to the Uniform Guidance.

Procurement Process

1. Procurement Type

When procuring goods or services, there are two common forms -- an invitation to bid (ITB) or a request for proposal (RFP).

A. Invitation to Bid (ITB)

A call to contractors to submit a specific product or service proposal. An ITB is generally awarded to the contractor who submits the lowest bid. ITBs are utilized when there is little to no guesswork as far as how the project will be completed. Essentially, every bidder can produce the same product or service, so the only thing that separates them is the cost. Bids are sealed in envelopes and opened publicly. The contract is awarded to the lowest bidder regardless of its experience or reputation. This is done to remove bias from the selection process and promote fair competition.

B. Request for Proposals (RFP)

A solicitation document is used for competitive procurements that exceed a threshold established by the SVRA's State law or procedures and is normally used for larger, advertised competitive procurements for services. It is an alternate acquisition method to the ITB.

Remember to include language required by the Stevens Amendment.

2. Competition

Procurement transactions must be conducted in a manner providing full and open competition consistent with Federal and State standards. State standards may stipulate avoidance of any of the following:

- Placing unreasonable requirements on potential vendors for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices;
- Organizational conflicts of interest;
- Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement;
- Any arbitrary action in the procurement process;
- Allowing a contractor that is bidding on the contract to have involvement with developing or drafting the specifications, requirements, statement of work, invitations for bids, or requests for proposals (If so, that contractor must be excluded from competing for such procurements); and/or
- Neglecting State or local geographic needs that would otherwise substantiate preference for local contractors.

3. Review and Selection Process

SVRAs must refer to their State procurement laws and procedures regarding the review and selection process expectations. Although the designated State agency (DSA) may be included, the designated State unit (DSU) (the SVRA) has sole authority over the obligation and expenditure of State Vocational Rehabilitation Services (VR) program funds (**Section 101(a)(2)(B)(ii)(II), (IV) and (V) of the Rehabilitation Act** and **34 C.F.R. § 361.13(b)(1)(v)**).

The following are examples of activities that may be included in the review and selection process:

- **Establish an evaluation team** tailored to the acquisition that includes appropriate contracting, legal, logistics, technical, and other experts to ensure a comprehensive evaluation of offers;
- **Approve the review and selection strategy**, if applicable, before solicitation release;
- **Ensure consistency** among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;
- **Ensure that proposals are evaluated** based solely on the factors and subfactors contained in the solicitation; and
- **Determine if the vendor can comply** with the proposed or required time of delivery or performance schedule and have a satisfactory record of integrity, judgment, and performance.

SVRAs **must** ensure the vendor is eligible to receive Federal funds and is not suspended or debarred. Federal eligibility may be determined through [SAM.gov](https://sam.gov). State law or procedures should be considered for State-level verifications.

Additionally, States may have government priorities established in law or procedures that give preference to entities such as the following in the procurement selection process. SVRAs need to understand their State requirements as applicable.

- Minority-Owned Business Enterprise
- Women-Owned Business Enterprise
- Disadvantaged Business Enterprise
- Veteran-Owned Business Enterprise

4. Price Negotiation

SVRAs must ensure that the cost to be paid for goods and services is fair, reasonable, and cost-effective. The SVRA must develop a cost basis supported by a rate-setting methodology.

See the [Rate Setting Methodology Guide](#) published by the VRTAC-QM.

Be sure to have supporting documentation demonstrating how the cost was determined and how the cost is proportional to the benefit received by the VR program.

The following cost considerations must be made as required in the Cost Principles section, **Subpart E**, of the Uniform Administrative Requirements and any additional applicable provisions.

- Be necessary and reasonable for the performance of the Federal award and be allocable to it under these principles.
- Conform to any limitations or exclusions outlined in these principles or the Federal award as to types or amount of cost items.
- Be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the non-Federal entity.
- Be accorded consistent treatment. A cost may not be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- Not be included as a cost or used to meet cost-sharing or matching requirements of any other Federally-financed program in either the current or a prior period;
- Be adequately documented;
- Must be incurred during the approved budget period.

Contracts must contain all required State, Federal, and agency requirements to protect State and Federal funds from waste, fraud, and abuse (**[Appendix II to Part 200 Title 2](#)**).

Cost analysis and price analysis are two unique methods of projecting costs for projects and programs. Cost analysis incorporates the reasonable cost to the vendor of producing the goods or services to determine if the price quotes are fair and appropriate, while price analysis looks purely at the unit price stated by the vendor.

A. Cost Analysis

Possible factors to consider when individually negotiating with a vendor include the personnel costs for direct service provision, fringe benefit rate, report writing time, other administrative costs, average mileage, travel costs, and inflation.

- Ask the vendor to supply the breakdown of costs based on an hourly basis and then add all the components to help determine a rate per hour.
- Consider other factors, such as lack of service availability for underserved regions and populations.
- The rate calculation is adjusted according to the determining factors as necessary, and a final rate is determined.

B. Price Analysis

In performing a price analysis, determined to be fair and reasonable, without examining the individual components of the price, a SVRA has a wide selection of possible methods. The method used and its suitability depend on the individual purchase's facts or information.

A list of the **most common methods or criteria used to determine a fair and reasonable price** is as follows:

- **Adequate Price Competition:** Two or more acceptable offers are received, and the lowest bid is selected. The price of the lowest offer can be concluded to be fair and reasonable.
- **Comparable to Price Sold to Federal Government:** The entity also enters into contracts with the Federal government. If the seller cites a GSA contract price, the SVRA will want the GSA contract number to be verified.

- **Historical Price:** If the SVRA has a history of purchasing this item or service over several years, the SVRA can use this information, considering inflation factors, to determine a fair and reasonable price. Document the historical pricing summary (copies of computer reports or spreadsheets with the agreed-upon rates by year).
- **Comparison to In-house Estimate:** Compare the rate provider's charge for a service to the rate the SVRA would pay for staff time and benefits to perform the same task.
- **Comparison to Similar Items:** The vendor contracts with various entities and charges this similar rate to all entities (e.g., Department of Education, Department of Human Services, etc.). Document the individual contacted at the entity, date, and the rate they pay.
- **Cost Analysis:** A cost analysis looks at and analyzes the individual elements of the price (e.g., use labor rates, direct and indirect costs, items like mileage and travel costs, inflation).
- **Other Factors:** Look at other factors such as geography and any additional costs related to location and specific populations. For example, the SVRA is contracting for a job coach to provide sign language interpretation for deaf customers. Instead of paying for both an interpreter and the job coach, consider factoring in an increased rate for handling both duties.

SVRAs may set up cost and price analysis methods to perform both projections at once. This allows a true comparison of the results to be considered in the framework of a true value comparison. Quality expectations affect the long-term value of services. The vendor with the lowest cost or price may not deliver sufficient quality and life span of goods and services to meet the organizational needs.

Terms and Conditions

1. Authorized Representatives

The agreement must clearly identify the parties and designated representatives. These are the individuals who sign the contract.

2. Effective Date/Term/Termination

The agreement must clearly state both effective and expiration dates.

The agreement must also contain the circumstances under which the contract can be terminated with or without cause and include default remedies. (SVRAs should look at their State regulations, but typically, States have a 30-day termination at the convenience of the State.)

3. Vendor Qualifications

The contract should include personnel qualifications for the vendor's staff providing the services. This includes the technical qualifications, skills, and experience required to carry out the services outlined in the contract. Any certifications required of vendors to carry out the work must be identified in the contract, and written expectations that credentials will be maintained. The contract should describe the process for addressing situations in which credentials are not upheld. If specific credentials are required of vendors who work with VR participants, the written procedures must be clear about prohibiting work with VR participants when vendor staff is out of compliance with this requirement.

There might be instances when certifications are not required, but specific training is required. The same requirements exist for outlining the expectations in the contract, such as the topic, frequency, documentation methods, etc. Also, identify the consequences when training is not provided or followed as expected, and if VR participants are receiving services under the contract, describe any prohibitions on service delivery.

Additionally, a SVRA may require criminal background checks to ensure the health and safety of consumers. SVRAs must understand their State laws and regulations that govern the use of criminal background checks. Depending on the

unique requirements in each State, SVRAs may pay for the criminal background check, or the cost may be assigned to the contractor.

If the SVRA has a contract provider manual that lists the qualifications of vendor staff required to provide a service, include a reference to the contract provider manual as a term/condition of the contract.

4. Scope of Work

The SVRA will develop a scope of work that clearly defines the goods or services and states the SVRA's requirements. It is essential to spend time analyzing the agency's needs to be concise about expectations, so the outcome is what is expected.

The scope of work should include the following:

- Detailed description of contract goals and objectives, including each service to be provided and who will provide that service, as well as who is to receive the services;
- Budget parameters;
- Deliverables, including a description of expected reports;
- Schedule or delivery requirements;
- Performance measures;
- Communication expectations; and
- Monitoring plan.

In monitoring reviews, RSA often determines that performance measures are not sufficient to effectively measure the provision of services ([2 C.F.R. § 200.329\(a\)](#)). To be effectively measurable and meaningful, a performance standard must contain a baseline and either an amount or a percentage of change or variance (increase/decrease) from the baseline.

The following performance objectives are all missing a baseline against which a measurable change (increase/decrease) may be calculated, a projected number of participants to be served, or the number and type of services to be provided. The performance objectives must be relevant to the services provided and not represent overall program objectives.

For example, the following statements are too broad and **not** measurable –

- Increase graduation rates for students with disabilities;
- Decrease dropout rates for students with disabilities;
- Increase postsecondary outcomes; and
- Increase employment rates for participants.

Some satisfactory performance objectives for a service provider contract may include the following:

- Increase participants' average wage above a designated baseline by 20%;
- Serve 15 additional participants (measurable increase) over the 35 served (baseline) in the previous year;
- Increase job exploration counseling services from 16 participants (baseline) to 24 participants (measurable increase) by (date);
- Conduct 12 workplace readiness sessions (baseline) by (date) (measurement is the actual number of sessions conducted by the stated date);
- Increase the number of participants enrolled in education/training leading toward a credential by 10%;
- Increase the number of participants completing apprenticeship training by 30%; and
- Increase the number of participants obtaining a credential by 25%.

In some instances, a master contract may exist with associated individual contracts/authorizations issued per participant. The individual contract/authorization details the performance expectation of the vendor specific to the participant.

5. Conflict of Interest

A conflict of interest arises when an employee or a family member is in a position to benefit personally, directly or indirectly, from their relationship with a person or entity conducting business with the SVRA. All employees must avoid conflict, or the appearance of conflict, between their personal interests and the interests

of the SVRA and avoid any situation that affects, or potentially could affect, their independent, unbiased judgment in discharging their duties to the SVRA. Employees should recuse themselves from making any decision relating to SVRA business when they are aware of circumstances that might reasonably cause their impartiality to be questioned.

To say that one has a conflict of interest does not necessarily mean that the individual involved acted or is expected to act inappropriately. However, if a competing interest exists that creates a conflict-of-interest concern, certain actions by the individual are required.

Examples of conflict situations are as follows:

- A.** An employee reviews, approves, or controls a contractual or business relationship between the SVRA and a business with which the employee or a family member has a financial relationship.
- B.** An employee supervises, reviews, determines compensation, or assigns work to a family member at the SVRA.
- C.** An employee has, or is aware that a family member has, a significant interest in an outside business that provides goods or services to the SVRA.
- D.** An employee directs a business opportunity or non-public information that could benefit the SVRA to a third party with which the employee has, or is aware that a family member has, a financial relationship.

For example, a family member of an employee lives with the employee or an employee controls the assets of a family member. In that case, the SVRA assumes that the employee will be aware of the financial relationships that any such family member has with entities that are doing business with the SVRA. Even if a family member does not live with the employee, an employee is still obligated to report any potential conflict of which they become aware involving a family member and recuse themselves from any decision to award business or other SVRA benefits to an entity with which a family member is known to have a financial relationship.

The contract should also require that if the contractor or contractor's employees, including any subcontractors assigned to the contract, qualify as a conflict during the term of the contract, the contractor will notify the SVRA in writing immediately upon determination. Describe what happens if this situation is encountered. What are the responsibilities of the contractor, and what actions may the SVRA take?

Any State conflict of interest policies must be adhered to by the SVRA in addition to the Federal requirements.

E. Gifts, Entertainment, and Gratuities

It is the SVRA's responsibility to award business to vendors based on considerations such as quality, service, competitive pricing, and professional and technical abilities. Gifts from vendors, contractors, and others conducting business (or seeking to conduct business) with SVRAs may appear to be a gesture of goodwill and appreciation and may even be customary business practice, but SVRA staff should be aware that gifts are generally given with the intent to influence a current or future business decision and accepting such gifts can therefore create conflicts of interest. It is the obligation of the employee responsible for a business relationship to handle gifts properly.

6. Contract Amount and Payment Terms

The total contract amount should be clearly stated based on the cost determined during the procurement process. Depending on the type of contracted amount, the maximum amount may not be guaranteed to the vendor and instead may be dependent on the provision of specific goods or services defined in a purchase order or a participant service authorization. In this case, a master contract may exist with individual purchase orders or authorizations that fall under the master contract. While the master contract identifies an overall total amount, individual purchase orders or participant service authorizations identify the specific goods or services to be provided with individual amounts.

The body of the contract should provide the following:

- Details regarding the method for submitting invoices. This may include submission by paper vs. electronic, vendor's name, remittance address, Federal taxpayer identification number or Social Security Number, invoice date, participant's identifier (if applicable), contract number, description of the goods and/or services and date(s) provided (with sufficient detail to identify expenditures per service per individual), including where invoices are to be submitted.
- The timeframe a vendor has to submit a valid invoice to the SVRA and at what point a vendor would not be paid for a late invoice, along with any additional State-specific terms or conditions. State the timeframe the State is required to make a payment. The State may have provisions in statute for interest penalties due to a vendor if the State doesn't pay within an allotted period of time.

Note: *Interest, penalties, or late fees assessed for late payments to vendors are not payable from Federal funds or non-Federal funds used for VR match (2 C.F.R. § 200.407(n), 2 C.F.R. § 200.441).*

- **Common RSA Monitoring Finding:** The contract should instruct the vendor to provide an itemized invoice that references the expenditures for specific goods or services provided. For VR service delivery, the invoice should also reference the participant(s), with sufficient detail for the SVRA to identify the expenditures per service per participant. This allows the SVRA to report required financial and performance data (e.g., RSA-17, RSA-911).
- The maximum amount the SVRA will be obligated to pay under this agreement, along with individual amounts the vendor may invoice for specific goods or services. A fee schedule may be attached to the contract outlining this element. The SVRA may consider including language stating that the contractor may not charge more under the current contract than they charge to others receiving the same or comparable services.

- A provision that requires the contractor to repay any questioned or unsupported costs identified through audits or contract monitoring as required under [Appendix II, paragraph A](#), which requires the following:
 - Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- The source of funding and the timeframe in which the funds are available. This may be accomplished by referencing the Federal Award Identification Number (FAIN), the Federal fiscal year time frame, the Assistance Listing Number (ALN) (formerly CFDA number), etc., associated with the obligation.
- The contract should require vendors to comply with all laws, rules, codes, ordinances, and licensing requirements that apply to the conduct of their business, including those of Federal, State, and local agencies having jurisdiction and authority. Identify what happens when such laws are violated. For example, identify actions that may constitute grounds for termination or cancellation of the contract.
- Language stipulating that authorized payment of goods or services listed in the contract may only be paid within the effective dates provided. The contract should be clear about not paying for goods or services outside the scope of work or the effective dates. Additionally, it should address how late invoices will be handled according to the SVRA policy established. It should also be clear that payments may not exceed the amount of the contract without a formal amendment/modification process.
- The State's requirements for payment of invoices should be clear in the contract.

- For any personnel costs, it should be clear:
 - Who exactly is being paid;
 - What they are required to do;
 - How it relates specifically to the VR services provided under the contract;
 - How long they are to do it;
 - What the qualifications of the personnel are;
 - How time worked will be tracked and reported, etc.

7. Changes, Renewals, Termination

The contract's terms and conditions should state how and when the contract may be changed, renewed, or terminated, including formal procedures. The following categories are commonly addressed within this section.

- **Assignment:** This provision says the Contractor may neither assign nor transfer any rights or obligations under the contract without the prior consent of the State and an Assignment Agreement, fully executed and approved by the same parties who executed and approved this master contract or their successors in office.
- **Amendments:** Typically, contracts may not be changed, modified, or assigned in any manner except by the parties through a written contract. Any amendments to the contract generally must be in writing and are not effective until they have been executed and approved by the same parties who executed and approved the original contract or their successors in office.
- **Waiver:** This may state that if the State fails to enforce any contract provision, the failure does not waive the provision or its right to enforce it.
- **Contract Completion:** The contract may state that completion of the contract includes all negotiations and agreements between the State and the Contractor. No other understanding regarding the contract, whether written or oral, may be used to bind either party.

- **Renewals:** Describe on what basis the State shall have the right, at its sole option, to renew the contract for additional designated periods or any portion thereof. Clarify if renewals are to be mutually agreed upon by both parties and the method of documentation (e.g., in writing).
- **Termination.** Provide all provisions establishing how and when either party may terminate the contract.
 - A. Termination by the State.** The State may cancel the contract at any time, with or without cause, upon written notice to the Contractor within a designated number of days. Upon termination, state if the Contractor will be entitled to payment and the basis (e.g., a pro-rata basis) for services satisfactorily performed.
 - B. Termination for Insufficient Funding.** The State may immediately terminate the contract if it does not obtain funding from the legislature or other funding source or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. State the terms. Termination may be required by written or fax notice to the Contractor. The State may not be obligated to pay for any services provided after notice and effective date of termination. If the contractor is entitled to payment, specify on what basis payment will be determined for services satisfactorily performed to the extent that funds are available. Include language if the State will not be assessed any penalty in the event the contract is terminated because of the decision of the legislature or other funding source not to appropriate funds. If applicable, provide any requirements that the State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.
 - C. Termination by the Contractor:** Specify that the Contractor may cancel the contract at any time, with or without cause, upon a designated number of days written notice to the State. Upon termination, state if the Contractor would be entitled to payment on a determined basis for services satisfactorily performed.

8. Audit and Accountability

The SVRA should know the State requirements regarding audit practices or supporting activities and accountability expectations. The Federal award compliance requirements normally do not pass through to contractors. However, the SVRA is responsible for ensuring compliance for procurement transactions that are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance ([2 C.F.R. § 200.501\(f\)](#), [2 C.F.R. § 200.501\(g\)](#)).

The contract may state that while the contract is in effect, the Contractor assures the State that it will keep such records, provide such information, and submit such reports as may be necessary for auditing, evaluation, or other business purposes. The State may require specific language that authority may be exercised, giving the Legislative Auditor the authority to audit records of the contractor for fiscal and program auditing. Provide language that State requirements must be met for all such records and supporting documents, and the contractor will retain them in accordance with current State laws and regulations.

9. Data Practices/Confidentiality

The Uniform Guidance at [2 C.F.R. § 200.303](#) requires VR agencies to have internal controls that implement "...reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive, or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality." This includes personally identifiable information (PII) maintained by contractors. Additionally, the SVRA is responsible for implementing written policies and procedures to safeguard the confidentiality of all personal information of individuals it serves, in accordance with [34 C.F.R. § 361.38](#).

Contractors are expected to safeguard sensitive information, recognizing it is a critical responsibility that must always be taken seriously. SVRAs must be familiar with their State-specific security policies to protect PII and other sensitive data. The following are examples of language that might be included:

- It is the responsibility of everyone to protect the data to which they have access. Users must adhere to the rules of behavior defined in applicable systems security plans, State-specific regulations, and agency guidance.
- Contractors having access to personal information shall respect the confidentiality of such information and refrain from any conduct that would indicate a careless or negligent attitude toward such information. Contract employees also should avoid office gossip and should not permit any unauthorized viewing of records contained in an agency system of records. Only individuals with a "need to know" in their official capacity shall have access to such records systems.

The loss of PII can substantially harm individuals, including identity theft or other fraudulent use of the information. Because SVRA employees and contractors may have access to PII concerning individuals and other sensitive data, there is a heightened responsibility to protect that information from loss and misuse.

With these responsibilities, contractors should ensure that their employees safeguard SVRA information to which their employees have access to at all times.

Contractors should ensure their contract employees know their responsibilities regarding PII protection. In addition, if contract employees become aware of theft or loss of PII, they must inform the SVRA immediately.

10. Indemnification

The State may have specific indemnification language to incorporate within the contract. An example is agents or employees; the contractor must indemnify, save, and hold harmless the State, its agents, and employees from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by the contractor's –

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

If there are unique circumstances where the indemnification requirements are not relevant, incorporate such conditions within the contract. For example, if the claim or cause of action results from the State's sole negligence, indemnification may not apply. In this situation, required language might state that the clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under the contract.

11. Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

There are several requirements applicable to contracts under [Appendix II to Part 200 of Uniform Guidance](#). SVRAs must know the various requirements or prohibitions and include them in contracts.

12. Business Compliance

Insurance: SVRAs must know their State laws and procedures for insurance requirements. The types of liability insurance generally relevant to most personal/professional services contracts are workers' compensation insurance, professional liability insurance, and general liability insurance. In some cases, automobile liability insurance is also important. It is essential to be aware of the effective dates of insurance policies and how they line up with contract dates to avoid lapses.

13. Nondiscrimination

Include nondiscrimination language. The State will likely have standard language for this section. An example may look like the following:

It is the policy of <SVRA> not to discriminate based on race, color, religion, gender, sexual orientation, national origin, age, veteran status, mental or physical disability in its programs or employment practices as required by Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of

1975, Title II of the Americans with Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), the Genetic Information Non-Discrimination Act (GINA), or USDA Title VI.

14. Force Majeure

State requirements may include a "force majeure" (French for "superior force") clause. This contract provision excuses the parties for the performance of contractual obligations when performance is prevented by unexpected circumstances beyond their control. Force Majeure clauses may vary from State to State. Depending on how the provision is written, it may excuse nonperformance when a set threshold has been exceeded or only in a limited set of circumstances.

Obligation of Funds

All funds (obligations and expenditures) must comply with the period of performance requirements. Obligations and expenditures must, therefore, identify the source of funds to which they are assigned, whether an FFY grant award, State funds used for a particular FFY grant award, or program income. This is applicable to all legal instruments used for contracting goods or services. Additionally, the source of funds and balance must be tracked throughout the life cycle of the legal instrument. The SVRA should have formal written policies, procedures, and internal controls governing contract obligations, amendments, cancellations, and associated payment processes.

States MUST understand and apply the requirements of [34 C.F.R. § 76.707](#) when obligating funds. **Obligations under contractual arrangements are not assigned according to when the good or service is provided. They are assigned based on when the State makes a binding written commitment to obtain the good(s) or service(s).** Know where to find this requirement, as it is a key driver in managing program funds accurately. Also, understand the payments on contractual obligations must follow the assignment of the obligation. In other words, the payment must be made from the same funds the contract was obligated against. When utilizing the carryover period, keep in mind there are two Federal grants open simultaneously. It is not permissible to assign an obligation to one Federal grant and pay from the other. However, this does not preclude an SVRA from subsequently making accounting adjustments between available VR grant funds from Federal awards with overlapping periods of performance (i.e., the current award in the year of appropriation and the prior FFY award in an eligible carryover year). The SVRA must follow its written policies, procedures, and internal controls.

Contracts should be managed effectively so the SVRA always knows each individual balance and which contractual obligations are outstanding. Outstanding obligations include obligations for which goods or services have not yet been provided and those that have been provided and for which the SVRA awaits invoices. Obligations requiring cancellation may also be included, provided the obligations remain in the State's accounting system. SVRAs should promptly deobligate funds when the funds will not be used. This means that contracts (or authorizations issued under master

contracts) should be canceled regularly when the agency no longer requires the goods or services.

The agency should also take prompt action when additional funds need to be added to a contract for goods or services or when timeframes need to be extended. Contracts should adequately cover the timeframes and funds required to carry out the terms and conditions of the contract. If modifications or amendments are necessary to extend timeframes and/or add additional funds, these should be completed before the expiration of the timeframe and before funds are depleted. Ensure any amendments to dates align with the availability of the funds the contracts are assigned to.

Contractual obligations must be completed by the end of the period of performance for the award and liquidated by the end of the liquidation period for the award. For example, an SVRA has a contract for \$100,000 assigned to FFY 2021 funds. All services have been provided; however, the SVRA has only received invoices totaling \$90,000. Those invoices have been paid, leaving a remaining balance of \$10,000. The SVRA has not received invoices for this balance. To liquidate the contract and comply with regulations, the SVRA has 120 days after the end of the period of performance.

Availability of Funds (Period of Performance):

If the award **does not** qualify for a carryover period, the \$10,000 must be paid or deobligated within 120 days following September 30, 2021 (end of the 4th quarter).

If the award **does** qualify for a carryover period, the \$10,000 must either be paid or deobligated within 120 days following September 30, 2022 (end of the 8th quarter).

In either scenario, contract payments or deobligations must be processed, allowing enough time for preparation and timely submission of the RSA-17 (i.e., for VR awards) and SF-425 report (e.g., for Supported Employment and OIB awards).

Note: *Award funds may not be used for the needs of some time period subsequent to the expiration of the award's period of performance. A more common statement of the rule is that an appropriation for a given FFY is not available for the needs of a future FFY (with the exception of carryover requirements). Therefore, obligations and expenditures for a given FFY award must benefit the period of performance for that award.*

Contracting Internal Controls

Managing Contract Compliance and Performance

Throughout the life of a contract, SVRAs must hold contractors accountable for the delivery of quality services and diligently and regularly monitor both the quality of the services contractors provide and whether contractors are using public funds effectively and efficiently. Uniform Guidance at [2 C.F.R. § 200.329](#) (Monitoring and reporting program performance) identifies the SVRA as responsible for overseeing the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to **ensure compliance with applicable Federal requirements and performance expectations are achieved**. Tracking the compliance and performance of the contractor is the principal function of proper contract monitoring and administration. The Contract Management Checklist referenced in **Appendix A** may be used as a guide for this process. The purpose of this function is to ensure -

- Performance under the contract meets the terms, conditions, and specifications of the contract;
- Vendors are qualified to perform the work required of the contract;
- Elimination of conflict of interest between vendors and employees and/or among vendors during the bidding, awarding, drafting, payment, or execution of the contract, including segregation of duties among personnel;
- All goods and services under the contract are delivered or performed in accordance with contract specifications;
- Only allowable VR costs are billed and paid; and
- All expenditures are supported by adequate documentation demonstrating compliance with the terms and conditions of the grant award.

Contract oversight should be sufficient to ensure that contractors consistently provide quality goods and services (by measuring performance against well-documented expectations) and that public funds are spent effectively and efficiently, and the following best practices observed:

- Monitoring functions should focus on the outcomes of services provided and the cost-effectiveness/prudence of contractor expenditures in addition to compliance with regulations;
- Results of monitoring reviews, audits, and investigations should be routinely followed up on to ensure corrective actions have been taken and to identify common problem areas;
- A formalized risk assessment process should be used to select contractors for review and identify the level of review necessary for each contractor; and
- Standardized criteria should be established to evaluate contractor performance.

Contract monitoring should make known any problems or issues timely so the SVRA can address them promptly and identify required remedies within the agency, such as evaluation and modification of policy & procedures, offering training, taking personnel actions, etc.

Not every contract will require the same level of monitoring. All contracts must be reviewed periodically within the contract term considering size or contract value, associated risk, sensitivity (contracts receiving a high volume of public scrutiny), and type of contract and services being provided. Small-dollar or less complex contracts may require less intensive monitoring. However, that does not preclude the possibility of more detailed monitoring if deemed necessary. Conversely, large dollar contracts may require less extensive monitoring if the items or services purchased are not complex, the SVRA has identified consistent and compliant contractor performance, and the level of risk associated with the contract is low. When assessing risks to determine the level of monitoring, the identified risks should be linked to the monitoring plan.

This function is separate from, but closely related to, the role of the project manager. Typically, a project manager plans and organizes the resources required by one or more parties to a project and coordinates the use of those resources, as needed, for the completion of the project. More complex projects may involve multiple contracts, and simple projects may not assign a separate project manager.

SVRAs should develop written contract monitoring policies and procedures, and consider the use of tools, checklists and/or instruments to assist SVRA staff with contract monitoring and to ensure the monitoring addresses contract requirements

and performance areas important to the SVRA. The inclusion of contract monitoring requirements and activities in contract language informs the contractor of what to expect throughout the life of the contract and upon contract reconciliation.

1. Risk Assessment

Limited resources require the use of risk assessment to assess contract performance because there is not sufficient time to oversee all aspects of a contract. An effective risk assessment model will help focus monitoring resources on contractors or performance activities with the highest risk of noncompliance.

First, identify risk factors. Risk factors are indicators that help evaluate the risk of the contract or project objectives not being achieved. General risk factors to be considered in the development of the contract may include, but are not limited to, the following:

- The contractor's past performance (and past performance of similar contractors);
- The impact of poor contractor performance on SVRA services;
- Turnover in key contractor personnel;
- Prior complaints or inquiries;
- The dollar amount of the contract;
- Significant and/or repeated problems with payment requests;
- Results of desk reviews or expenditure document reviews;
- Results of performance reviews completed by other agencies or divisions within the State that contract with the same contractor;
- The contractor's experience level with the type of work to be performed; and
- Any unmet requirements shall be addressed, documented, and maintained in the contract administration file.

Risk factors during contract performance could include the following:

- Multiple schedule delays or slow deliveries;
- Frequent personnel changes or juggling of work assignments;

- Inadequate staff qualifications and/or lapse in maintaining qualifications;
- Poor communication, including evasive responses to inquiries and status requests or failure to return calls or respond to information requests;
- Lack of progress on completing deliverables or outcomes required under the contract's terms;
- Lack of, delayed, or poor-quality required documentation that does not support contract activities;
- Requests for milestone payments without finalizing deliverables;
- Downplaying the seriousness of problems and their impact on project completion; and
- Lack of preparation or planning for upcoming requirements or activities.

2. Contract Monitoring

The level of contract monitoring should be consistent with the complexity and level of risk of the contract, its terms and conditions, and its dollar value. Early in the procurement process, identify staff to participate in contract monitoring.

Contract monitoring activities may include the following:

- Determining the sequence of activities, dependencies, required outcomes, and acceptable performance levels;
- Developing a plan, including start and end dates for each performance component, milestones with accompanying timeframes, monitoring, and reporting requirements;
- Establishing clear lines of communication, identifying a point of contact who may interact directly with the contractor;
- Accessing contractor data, materials, and information;
- Monitoring contractor activity on a specified frequency to identify problem areas;
- Communicating with the contractor regularly to review progress and discuss problems and necessary changes;
- Addressing identified problems and resolutions;

- Maintaining documentation of monitoring activities and resolution of identified defaults;
- Verifying receipt of specified services, goods, and reports;
- Verifying that all performance measures and reports are completed satisfactorily in accordance with the contract;
- Developing, implementing, tracking, and enforcing corrective action plans;
- Liquidating damages assessed or collected;
- Investigating and requiring repayment of misused funds; and
- Seeking cancellation of contract based on non-performance.

When assigned to monitor a contract, one should immediately review the statement of work and other contract terms, including contractor compliance requirements. These requirements are deliverables to which the contractor and the SVRA agreed when the contract was executed, or the purchase order was issued. Design the monitoring plan to focus on items that are most important. Generally, this means focusing the monitoring on the outputs and outcomes that result from the contract. Factor in the results of the risk analysis as well. The extent of contract monitoring will not be the same for all contracts.

A. Monitoring and Evaluating Compliance

For all costs, agencies are responsible for ensuring that they are evaluating and monitoring their compliance with all terms and conditions of the award (**2 C.F.R. § 200.303(c)**), which includes monitoring contracts to ensure all aspects of the agreement meet Federal requirements as well as State requirements. SVRAs should have documented written processes demonstrating they take prompt action when noncompliance occurs (**2 C.F.R. § 200.303(d)**). Whether in the agreement or not, something must be written (**2 C.F.R. § 200.302(b)(7)** and **34 C.F.R. § 361.50(a)**) informing the contractor what actions the SVRA will take if the contractor does not meet the contract requirements.

Contracts must comply with the Education Department General Administrative Regulations (EDGAR), the terms and conditions of the grant award, GAN attachments, and all RSA issuances. Agencies must ensure funds used for contractual services are obligated and spent in accordance with

Federal requirements. An example of a thorough **Contract Monitoring Guide developed by Texas Southern University** may assist a SVRA to ensure all written requirements and processes are in place.

B. Developing a Contract Monitoring & Administration Plan

A Contract Monitoring & Administration Plan (Plan) may be used by the contract administrator with each of its contracts and may be adapted as needed. The use of this Plan helps to ensure proper management of the contract and provides a record that professional management practices were used in the monitoring and administration of the contract.

This Plan may include, but is not limited to, the following:

- Contract administration file;
- Performance monitoring activities;
- Financial and program reporting; contract payments; and
- Payment approval processes.

Contract monitoring involves multiple activities, all coordinated to determine vendors' performance and compliance as required within SVRA contracts.

C. Monitoring Review Types

There are different types of monitoring reviews, including but not limited to site visits, desk reviews, expenditure document reviews, and monitoring by third parties. Depending on the type and scope of the contract, one or more methods, or a combination of elements, may be used.

- **Site Visit (full and limited scope):** Full scope site visits are typically scheduled visits to the contractor's place of business/physical location where contract services are provided. They are based on a risk assessment of the contract and cover a broad range of contract compliance and performance requirements. Limited scope site visits typically focus on a particular problem. Some SVRAs incorporate input from periodic VR Counselor staffing meetings with the contractor as part of contract monitoring.

- **Desk Review:** These reviews may also include similar scopes described under Site Visits; however, the vendor is reviewed based on local documentation available to the SVRA and discussions with SVRA staff. The SVRA may also engage in remote meetings with the contractor.
- **Expenditure Document Review:** Standard internal controls for the payment process should include a review of contractor invoices to determine if the rates and services on the invoices align with the contract. This type of review may serve two purposes. State level requirements for invoice processing may be evaluated for compliance. Additionally, documentation should demonstrate the cost is allocable to the Federal or non-Federal share. Contract monitoring may then include a verification process independent of the payment process to ensure compliance.
- **Monitoring by Third Parties:** SVRA's resources may not provide the capacity to carry out the work within their agency. In that event, the SVRA may consider outsourcing to an outside entity to perform this function. This still requires an internal process for receiving and acting on the information presented by the outsourced contractor. Additionally, the SVRA is responsible in the event the monitoring contractor does not identify non-compliance or misused funds on the SVRA's behalf.

D. Using Monitoring Review Results

Establishing a process for using the monitoring results is critical to the monitoring process. Monitoring reviews must be followed up on a routine basis to –

- Build active communication and collaboration with the contractor;
- Ensure corrective actions have been taken, including administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate;
- Identify common problem areas that might require training;
- Improve future contracts; and

- Evaluate the efficacy of policies and procedures.

E. Corrective Action Plan (CAP)

This section documents the process to initiate, develop, review, execute, and close out a CAP to address contract requirement deficiencies. A CAP is one of several tools available to the SVRA to help ensure a contractor fulfills its responsibilities under the contract and ensures the project is completed or services are provided in the required manner. Contract provisions, the deficiencies identified, and the nature of the circumstances will help the SVRA determine whether a CAP or other remedial option under the contract is appropriate. If there are adverse findings, the contract monitoring activities will identify and document how the Contractor –

- Violated terms of the contract or work order;
- Failed to take remedial action; and/or
- Failed to make financial restitution.

The general benefits of a CAP process are to –

- Clearly identify, agree upon, manage, and monitor actions to remediate contract deficiencies;
- Establish transparency for follow-through and follow-up on CAP action items;
- Follow a standardized process for reviewing and approving CAP remediation activities; and
- Determine root causes of deficiencies to reduce the probability of recurrence; reduce uncertainty and minimize risk.

Overview of Corrective Action Plan Process

The SVRA should follow any State-specific requirements for resolving compliance or non-performance contract deficiencies. Generally, the key elements of a CAP process would include the following:

- **Written Notification to the Contractor:** Upon determination of the need for a CAP, provide the contractor with written notification to include the following:
 - i. Background of the problem:
 - a. Who is involved?
 - b. What is happening?
 - c. What are the related issues/factors/extenuating circumstances, if any?
 - d. When was the issue identified?
 - e. When did the issue begin?
 - f. What is the impact (actual and potential)?
 - g. What does the contractor need to do to meet compliance issues?
 - ii. Clear, descriptive statement of each compliance and/or non-performance deficiency;
 - iii. Any supporting facts and possible causal factors;
 - iv. Reference to appropriate contract provisions;
 - v. Reference to applicable, related documents (i.e., invoices, progress reports, other correspondence, etc.); and
 - vi. "Due by" date for the contractor to respond with a CAP.
- **Contractor Response:** Following receipt of written notification from the SVRA, the contractor prepares a written response in accordance with contract requirements acceptable to the SVRA. The contractor submits its response to the SVRA no later than the "due by" date stated in the notification.

- **Development of the Corrective Action Plan includes the following:**
 - i. The contractor's proposed corrective action(s) for each compliance/non-performance problem/deficiency identified by the SVRA;
 - ii. A detailed description of the corrective action(s);
 - iii. A reasonable timeline of how long it will take the contractor to resolve the issue;
 - iv. The contractor's individual(s) who will be responsible for the CAP;
 - v. The process for tracking and reporting the status of CAP completion;
 - vi. Planned prevention activities to avoid a recurrence; and
 - vii. SVRA's planned monitoring activities to ensure remediation.
- **Acceptance/Rejection by the SVRA:** The SVRA should determine if the CAP is sufficient to remedy the compliance/non-performance deficiencies and notify the contractor in writing of acceptance or rejection, including required contractor revisions of corrective action provisions that are acceptable and necessary for the SVRA to approve the CAP.
- **Execution of the CAP:** Due diligence and follow-through is critical in this step. The implementation and completion of the CAP can be tedious, with the potential for ineffectiveness in the corrective action outcomes. Although findings are identified and detailed plans to correct them are developed, the often lengthy and weary process of actively completing and implementing the corrective action(s) for each deficiency tends to receive less attention as the emphasis is shifted to other more immediate initiatives, crises, and requirements.

- **Monitoring:** The CAP's execution must receive continuous management attention, ongoing monitoring of progress, adaptation to keep it on track, and periodic status communication. As CAP activities are completed, the SVRA should carry out any planned monitoring activities timely as stated within the CAP. If deficiencies still exist, the SVRA should follow State-specific requirements, including consulting with legal counsel. The contractor should be notified of the outcome and any further expectations. The SVRA should determine if it must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award ([2 C.F.R. § 200.113 Mandatory disclosures](#)).
- **Closeout:** The SVRA should have a process for closing out the CAP once remediation has occurred, including written notification to the contractor.
- **Lessons Learned:** Did the process work? Did it uncover any gaps in policies, procedures, or internal controls that need to be addressed? How can this information inform future contracting activities?

F. Dispute Resolution

Proper dispute resolution is a core skill of successful contract management. The goal of the resolution process is to resolve all problems before they escalate to the next level. It is essential to identify problems early in the performance period, use effective communication, and formalize the process in writing using procedures that increase in formality as the problem persists.

For contracts with relatively simple performance requirements, a vendor corrective action plan can be used. To avoid escalation and assure the SVRA has not exacerbated potential problems, appropriate personnel must respond promptly to all contractor inquiries. The general steps in the dispute resolution process are described below.

General Steps Governing Dispute Resolution

Steps	Description of Step
Identify the problem	The SVRA should obtain all the information regarding the potential problem from all relevant sources.
Research Facts	Once the problem is identified, the SVRA must review the contract to confirm that the issue is part of the contract. If the contract does not cover the issue, the State entity cannot expect the contractor to perform outside the agreement.
Evaluate	The SVRA should review the facts in conjunction with the contract's requirements and terms and conditions. The SVRA should then confer with appropriate management staff to determine the necessary course of action.
Discuss with the Contractor and Written Plan of Action	Identify the problem to the contractor and discuss a resolution. Frequently, what may appear to be a problem can be resolved by providing the contractor with information. The resolution should be in writing.
Meeting Strategy	If a meeting is necessary, the SVRA should prepare a plan and consider how to conduct the meeting, the desired result, the minimum acceptable result, likely responses, etc.

Default

The SVRA should know its State's requirements regarding default and follow local policies and procedures. Generally, a contractor is considered in default if they fail to perform in accordance with the terms and conditions of the contract (e.g., late delivery, nonconformance to specifications), but holding a contractor in default is a relatively drastic remedy and usually means that attempts to correct the problem have failed. Many contracts require a party to give notice if it considers the other party to be in default. Normally, a contractor would not be held in default until it has had an opportunity to correct a performance problem and the State's legal counsel has been consulted.

If it is determined that a contractor must be held in default, written notification should be sent to the contractor describing the unacceptable performance, resolution actions required, and a deadline in which to perform the required activities. Recall that Uniform Guidance, **Appendix II** requires contracts that exceed the simplified acquisition threshold to address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

Cure

When it has been determined that a termination for default is warranted, the SVRA should promptly notify the contractor in writing and specify a deadline to correct or cure the deficiency or violation. The deadline should provide a reasonable amount of time to resolve the issue.

Note that holding a contractor in default is not normally a unilateral decision. Typically, various risks and benefits are evaluated, legal advice is obtained, and the proper course of action is carefully planned collaboratively among multiple State level parties. Again, the SVRA should follow its State requirements. Usually, this is the final step before terminating a contract, once every other effort to save the contract has been made.

Remedies

In case of default by the contractor, the SVRA may need to terminate the contract and procure the goods or services from other sources according to State requirements.

Contractor Complaints/Discrepancies

SVRAs should maintain a documentation file for all correspondence exchanged between the SVRA and the contractor according to State requirements. This will include records of complaints and discrepancies about the contractor. Potential sanctions against a vendor (e.g., debarment) can only occur if a written record demonstrates a problem exists and the contractor was informed of its poor performance.

Contract Closeout

The purpose of closeout activities is to verify that both parties to the contract have fulfilled their contractual obligations and that no responsibilities are remaining. In addition, contract closeout is the time to assess the success of the contract and determine if there are any lessons learned for future contracting.

The SVRA is responsible for ensuring the work performed under a contract has been completed satisfactorily and determining when the contract is ready for closeout. The contract closeout process should verify all necessary documentation has been collected. Final payment is typically not made until all work is complete and all deliverables are received and accepted.

Closeout activities should be performed timely, and all contract documentation should be maintained according to record retention policies.

Reference: Texas Southern University's Contract Monitoring Guide-November 2017

Appendices

Appendix A

Contract Management Checklist

This checklist serves as an example and is not an exhaustive list. SVRAs must know their State procurement requirements and **customize a checklist** that ensures compliance with all State and Federal requirements. SVRAs should ensure staff members using a checklist are trained to assess the content and make consistent decisions related to whether contracts meet agency, State, and Federal requirements, in particular when different individuals are using the checklist for reviewing different draft contracts for different programs. Please note that this checklist does not represent contract monitoring and reporting of performance ([2 C.F.R. § 200.329](#)).

1. Purchasing Procedures

- Have the applicable Federal procurement laws, as well as State Regulations, policies, and procedures, been followed?
- Were contract terms and conditions included in the procurement documents?
 - If so, does the proposed contract conform to the procurement requirements?

2. Complete Contract

- Is the contract complete (i.e., are all pages accounted for, and have all exhibits and attachments been provided)?

3. Contract Parties

- Are all parties referenced in the contract?
 - Are all references to the parties, including the signature blocks, accurate, complete, and consistent?

4. Effective Date, Amendments, Term, and Termination

- Does the contract clearly state the –
 - Beginning and/or effective date?
 - Ending and/or expiration date?
- Is the process for amending the contract clearly stated?
- Does the contract provide circumstances under which the contract can be terminated with or without cause and include default remedies?

5. Vendor Qualifications

- Are vendor qualifications clearly identified within the contract or referenced elsewhere (i.e., contract provider manual)?
- Does the contract describe the process when vendor qualifications are not upheld?
- Does the contract address criminal background checks as applicable?

6. Goods and Services, Duties and Obligations

- Is a detailed Scope of Work included that defines –
 - To whom the services are to be provided (i.e., only VR participants or consumers);
 - Specifically, what services are to be provided, the definitions of those services, and how the services will be provided;
 - The completion date for service provision; and
 - What constitutes an acceptable result (i.e., performance measures)?
- For a product or non-professional service, is a detailed list of specifications included providing the criteria for performance design, or in the case of goods, the quality, quantity, and any other details?
- Are all duties and obligations of the SVRA and the other party to the contract clearly stated so that all parties know –
 - What the duties and obligations of each party are;
 - How those duties and obligations will be performed; and
 - When those duties and obligations will be performed?

7. Conflict of Interest

- Is the contract clear regarding expectations around conflict of interest for SVRA employees and the contractor?
- Does the contract state the process for notifying the SVRA when a conflict of interest arises during the contract period?

8. Consideration/Payment Terms

- Does the contract clearly and accurately state the maximum amount that the SVRA will be obligated to pay under the contract?
- Does the contract clearly establish the place, time, and method of payment?
- Does the contract establish invoice and supporting documentation requirements the contractor must follow?
 - Does this include the contractor's reporting of expenses for each service provided to each participant so the SVRA can report the required financial and program data on the Federal reports (i.e., RSA-17, SF-425, and RSA-911)?
 - Is the contract clear regarding the required invoice documentation to be met for contractor payment?

9. Data Practices/Confidentiality

- Does the contract define safekeeping of Personally Identifiable Information (PII) and other sensitive information?
- In the event of a breach, does the contract outline the process the contractor must follow?

10. Indemnification

- Is any State-specific indemnification language included within the contract?

11. 2 C.F.R. 200 Appendix II: Contract Provisions for Non-Federal Entities under Federal Awards

- Does the contract include the requirements applicable to **Appendix II to Part 200** within the contract?

12. Business Compliance

- Are all State insurance requirements included in the contract and provided by the vendor?
- Does the contract include nondiscrimination language?
- Does the contract include Force Majeure language if required by the State?

13. Contract Compliance

- Does the contract state how non-compliance will be addressed?
- Does the contract language permit a corrective action plan?
- Is language included that requires the contractor to repay misused funds or in the event contract outcomes are not achieved?

14. Other Ideas to Consider for Best Practices:

- Does the contract file include supporting documentation demonstrating how the –
 - Contract cost was determined and documentation that the determination was made in accordance with the SVRA's policy related to setting rates for payments; and
 - Cost is proportional to the benefit received by the VR program?
- Have assigned SVRA staff reviewed the contract before signature to ensure all required language has been included?
- Does a written contract management checklist exist for the contract?
 - Is the written contract management checklist completed?
 - Have staff initialed and dated the contract management checklist to verify completion?
- Does the SVRA have a written contract monitoring process to evaluate and document contract compliance and performance throughout the life of the contract?
 - Are the monitoring activities specific to the contract documented?

- Is a schedule in place for the specific monitoring activities outlining who is responsible, how the activities will be carried out, and when?
- Does the contract monitoring plan include provisions for timely action in the event contract deficiencies become known?
- Does the SVRA have a documented contract closeout process that ensures all deliverables are met, and final payment has been made, maintaining all relevant documentation according to record retention requirements?

Appendix B

Appendix II to Part 200